

ORDER

Pursuant to the authority vested in me by §§1403 and 1403(h) as amended, of the New York City Charter, and by §24-610 of the New York City Administrative Code, (New York City Hazardous Substances Emergency Response Law) I hereby order the following action to be taken:

Whereas, on or about 8/17/88 the New York City Department of
(date)
Environmental Protection was made aware of the release or threatened release of a hazardous substance, corrosive materials (including sulfuric acid, hydrofluoric acid and sodium hydroxide)
(name of substance(s)) Nelson Galvanizing, Inc.
at 111-02 Broadway, L.I.C., New York 1110
(address of site)
and;

Whereas, the release or threatened release of the above-named
(name of
corrosive materials into the environment constitutes a violation of
(substance) Title 24, Chapter 6 of the New York City
Administrative Code, and;

Whereas, such release or substantial threat of a release may present an immediate and substantial danger to the public health or welfare or the environment, and;

Whereas, pursuant to Title 24, Chapter 6 of the New York City Administrative Code you are deemed a responsible person to whom an order to implement response measures or to cooperate with and assist the Commissioner in implementing any response measures may be issued;

Therefore, the following work, cooperation or assistance is required at

Nelson Galvanizing, Inc.
(address of site) 111-02 Broadway, LIC, N.Y.

by see technical order
(time period)

The time for compliance with this order begins on immediately (8/19/88)
(date)

CLEAN-UP, CONTAINMENT, AND TECHNICAL ASSESSMENT
FOR
NELSON GALVANIZING INC.
11-02 Broadway
LIC, New York 11106

All of the work ordered to be done under this order must be performed in compliance with all local, state, and federal laws and regulations. The following procedures must begin immediately and be completed by the times specified.

A.

1. Retain a hazardous waste contractor to remove all waste liquid chemicals from the trench behind the process tanks (vats). To be completed by August 22, 1988.

B.

1. Discontinue the use of the undiked, and leaking 3000 gallon sulfuric acid storage tank by draining the tank and properly containerizing the material. To be completed by August 25, 1988.

C.

1. Discontinue the use of the leaking process tanks (vats). These include the five tanks containing sulfuric acid (two tanks), sodium hydroxide, hydrofluoric acid, and zinc ammonium chloride. The contents of these tanks must be pumped out and properly containerized. To be completed by August 29, 1988.

D.

1. Identify, segregate, properly containerize, and label all drummed chemical raw materials, in-process, by-products, and wastes (liquids as well as solids) within the facility.
2. Clean-up all waste chemical sludges and solids currently spilled and accumulated next to the process tanks (vats) and any other areas of the facility.
3. Provide proper storage for the out-of-service process tank (vat) containing waste chemical sludges, and currently being stored outside the facility on the sidewalk along 12th St.

Numbers 1, 2, and 3 to be completed by August 27, 1988. *gck*

E.

1. Develop a scope of work for the sampling and analysis needed to determine the nature and extent of soil contamination caused by leaks and spills, as evidenced by the presence of corrosive liquids in the trench adjacent to the processing tanks. This assessment must address the contamination present within the building and outside the facility in the area of the collapsed sidewalk and the New York City sewer system.

Such scope of work will be submitted to DEP for its approval prior to commencement of work. To be completed by September 17, 1988.

2. Retain a contractor and complete the work specified under the scope of work. To be completed per a timetable to be developed subsequent to submission of the scope of work.

NOTICE: TO PROTECT YOUR RIGHTS, READ THIS NOTICE:*

(1) Failure of a responsible person to comply with this order within the stated time may result in the work being performed by the Department of Environmental Protection, or, may result in the application to a court of competent jurisdiction for a order directing the responsible person to comply.

(2) Any responsible person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the commissioner issued pursuant to §24-608, may be liable: (a) for a civil penalty of not more than five thousand dollars for each day in which such violation occurs or such failure or refusal to comply continues; and (b) for an additional civil penalty in an amount at least equal to, and not more than three times, the amount of any costs incurred by the City as a result of such person's willful violation, or failure or refusal to comply. Such penalties may be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

(3) All costs incurred by the City, including but not limited to the costs of the Departments of Environmental Protection, Health and Sanitation, and the Police and Fire departments, for response measures implemented pursuant to Title 24, Chapter 6 or any other applicable provision of law shall be a debt recoverable from each responsible person and a lien upon the real property of or at which an owner, operator, lessee, occupant or tenant is a responsible person and at which such response measures were implemented.

(4) In addition to establishing a lien, the City may recover such costs and interest thereon by bringing an action against the responsible person. The institution of such action shall not suspend or bar the right to pursue any other lawful remedy for the recovery of such costs.

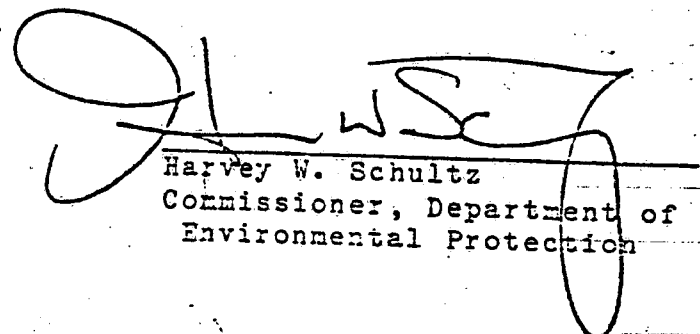
(5) You may request a hearing for determination as to whether this order should be modified or revoked. You must request a hearing in writing, within ten (10) working days of service of this order. Your request must give your name, the location of the site which is the subject of this order, the date of service of this order, the substance which was released or may be released, and the action ordered to be taken. Your request must also specifically state the reason why you are requesting the hearing and must include an address for subsequent service of documents. Failure to request a hearing within the stated time period will result in a loss of the right to challenge this order. Your request for a hearing must be served on the Department of Environmental Protection either personally, or by certified or registered mail at the following location:

New York City Department of Environmental Protection
General Counsels' Office
2353 Municipal Building
One Centre Street
New York, N.Y. 10007

You will be notified by mail of the decision with regard to your request for a hearing. Your request for a hearing when served within the stated time period, stays compliance with this order.

(6) A copy of this order is filed with the office of the register in the county in which is situated the property with respect to which such order was issued.

8/9/88
(Date)


Harvey W. Schultz
Commissioner, Department of
Environmental Protection

*A copy of the rules and regulations promulgated under the authority of Sections 1403 and 1404 of the New York City Charter, and by Sections 24-609(a) and (b), 24-610(a)(4), and 24-611 of the Administrative Code, is attached to this order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
IN THE MATTER OF:

Nelson Galvanizing, Inc. and
Nelson Foundry Company, Inc.
11-02 Broadway
Long Island City, New York

NYD001229350

Proceeding under Section 3008
of the Solid Waste Disposal
Act, as amended
42 U.S.C. § 6928
-----X

COMPLAINT, COMPLIANCE
ORDER AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. II RCRA-91-0206

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act ("RCRA") and the Hazardous and Solid Waste Amendments of 1984, ("HSWA"), 42 U.S.C. § 6901 et seq. ("RCRA" or the "Act"). Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), provides that the Administrator of the United States Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal program.

The State of New York received final authorization to administer its hazardous waste program on May 29, 1986. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. EPA retains primary responsibility for requirements promulgated pursuant to HSWA, until the State of New York amends its program to incorporate the HSWA requirements and receives authorization to enforce such requirements.

*What about filing for RCRA permit?
cc'n to NYC?*

Complainant in this proceeding, Conrad Simon, Director of the Air & Waste Management Division of the U.S. Environmental Protection Agency, Region II, has been duly delegated the authority to institute this action. The Complainant is issuing this COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING to the Respondents, Nelson Galvanizing Inc. and Nelson Foundry Company, Inc., as a result of an inspection conducted on or about November 29, 1990 which revealed that Respondent have violated or are in violation of one or more requirements of Subtitle C of RCRA, the New York State Environmental Conservation Law, and the regulations promulgated thereunder concerning the management of hazardous waste.

1. Respondents are Nelson Galvanizing, Inc. and Nelson Foundry Company, Inc. Respondents own and/or operate a facility known as Nelson Galvanizing located at 11-02 Broadway, Long Island City, New York (the "facility").

2. Respondents are each a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and in 6 NYCRR § 370.2(b)(123).

3. Respondents are "generators" of hazardous wastes, as that term is defined in 40 C.F.R. § 262.10 and in 6 NYCRR § 370.2(b)(74). Hereinafter, unless otherwise specified, "Respondent" refers to both Respondents jointly and severally.

4. By notification dated August 31, 1988, Respondent Nelson Galvanizing, Inc. informed EPA that it conducts activities at its facility involving "hazardous waste" as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and in 40 C.F.R. § 261.3 and 6 NYCRR § 371.1(d) and was issued the EPA Identification Number NYD001229350.

5. Title 40 C.F.R. Parts 262 and 268 set forth federal standards for generators of hazardous waste. Title 6 NYCRR Parts 370, 372, and 373 establish New York State requirements for generators of hazardous waste.

6. On or about October 3, 1989 an inspection of the facility was conducted (the "NYSDEC inspection"), pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by a duly-designated representative of the New York State Department of Environmental Conservation (NYSDEC).

7. On or about January 24, 1990, a Warning Letter from the New York State Department of Environmental Conservation ("the Warning Letter") was issued to the Respondent describing the violations noted during the NYSDEC inspection of the facility including:

- a. failure to mark the date upon which each period of accumulation began on each container of hazardous waste;
- b. failure to place a label or sign stating "Hazardous Waste" to identify all areas, tanks, and containers used to accumulate hazardous waste;
- c. failure to keep closed all containers holding hazardous waste during storage, except when it is necessary to add or remove waste;
- d. failure to keep a copy of each Annual Report and Exception Report for at least three years from the date of the report;
- e. failure to confirm, by written communication, that the designated transporter is authorized to deliver the waste to the facility on the manifest;
- f. failure to maintain personnel training records;
- g. failure to comply with the personnel training requirements;
- h. failure to operate and maintain the facility in a manner which minimizes the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents to air, soil, or surface water which could threaten human health or the environment;
- i. failure to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency; and
- j. failure to comply with contingency plan requirements.

8. The January 24, 1990 Warning Letter required the Respondent to confirm in writing within thirty (30) days that the cited violations had been corrected and required the submittal of documentation to support this confirmation.

9. On March 12, 1990, NYSDEC issued a letter notifying Respondent that a response to its Warning Letter

had not been received and requiring a response within fifteen (15) days.

10. In a letter dated March 22, 1990, Respondent requested a thirty (30) day extension from NYSDEC to respond to the Warning Letter. On April 6, 1990, NYSDEC granted Respondent an extension until April 27, 1990, to submit a response to the Warning Letter.

11. On April 26, 1990, Respondent submitted a response to the Warning Letter that indicated that Respondent no longer considered itself to be a generator of hazardous wastes. This response also addressed most of the violations cited in the Warning Letter by stating that Respondent had either never been in violation, had already corrected the cited violations, or would correct the violations at some unspecified time in the future. This response did not specifically address all of the cited violations described in the Warning Letter.

12. On or about November 29, 1990, an inspection ("the EPA inspection") of the facility was conducted, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by a duly-designated representative of EPA to determine compliance with specific state and federal regulations for the management of hazardous waste.

13. On or about December 13, 1990, a sampling inspection of the facility was conducted, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by a duly-designated representative of EPA to determine compliance with specific state and federal regulations for the management of hazardous waste.

14. On or about January 16, 1991, a second sampling inspection of the facility was conducted, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by a duly-designated representative of EPA to determine compliance with specific state and federal regulations for the management of hazardous waste.

15. On or about February 15, 1991 a follow-up inspection of the facility was conducted, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by a duly-designated representative of EPA to determine compliance with specific state and federal regulations for the management of hazardous waste.

16. Results of samples taken at the sampling inspections listed in paragraphs "13" and "14" indicated that the following materials are hazardous waste:

- a. drum of waste acid (D002) - pH 1.0
- b. drum of waste acid (D002) - pH 1.7
- c. drum of waste acid (D002) - pH 1.89
- d. drum of waste acid (D002) - pH 1.60
- e. drum of waste acid (D007) - Chromium (via TCLP analysis) Cr= 52.6 ppm
- f. drum of waste acid (D007) - Chromium (via TCLP analysis) Cr= 350 ppm
- g. drum of waste acid (D008) - lead (via TCLP analysis) Pb= 6.29 ppm
- h. drum of chemical precipitate byproduct (D008)- lead (via TCLP analysis) Pb= 26 ppm
- i. drum of chemical precipitate byproduct (D008)- lead (via TCLP analysis) Pb= 23 ppm
- j. drum of chemical precipitate byproduct (D008)- lead (via TCLP analysis) Pb= 84 ppm

17. On or about January 29, 1991 Complainant issued to Respondent a Request for Information under § 3007 of RCRA and § 104(e) of CERCLA.

18. On or about March 22, 1991 Complainant received from Respondent a response to the Request for Information referenced in paragraph "17".

COUNT 1

19. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

20. Pursuant to 40 C.F.R. § 262.34(a)(3) and 6 NYCRR § 373-1.1(d)(1)(iii)(c)(3) as cited by § 372.2(a)(8)(ii), a generator is required to label or clearly mark each container of hazardous waste being accumulated on-site with the words "Hazardous Waste".

21. The EPA inspection of Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14", and "15" and the NYSDEC inspection of Respondent's facility have indicated that Respondent has failed to label or clearly mark in excess of three hundred (300) containers of hazardous waste as described in paragraph "16" (Toxicity

Characteristic lead D008, Toxicity Characteristic chromium D007 and Corrosive Waste D002) accumulated on-site with the words "Hazardous Waste".

22. Respondent's failure to properly label individual containers of hazardous waste accumulated on-site, as alleged in paragraph "21", constitutes a violation of 40 C.F.R. § 262.34(a)(3) and 6 NYCRR § 373-1.1(d)(1)(iii)(c)(3).

COUNT 2

23. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 262.34(a)(2) and 6 NYCRR § 373-1.1(d)(1)(iii)(c)(2) as cited by § 372.2(a)(8)(ii)(d), a hazardous waste generator is required to provide the date upon which each period of accumulation begins, clearly marked and visible for inspection on each container stored at the facility.

25. The EPA inspection of Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14", and "15" and the NYSDEC inspection of Respondent's facility have indicated that Respondent has failed to clearly mark in excess of three hundred (300) containers of hazardous waste (as described in paragraph "16") with the date upon which each period of accumulation began ("accumulation dates").

26. Respondent's failure to provide clearly marked accumulation dates, as alleged in paragraph "25" above, constitutes a violation of 40 C.F.R. § 262.34(a)(2) and 6 NYCRR § 373-1.1(d)(1)(iii)(c)(2).

COUNT 3

27. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 262.34(a) and 6 NYCRR § 373-1.1(d)(1)(iii) and (iv) a generator may not accumulate hazardous waste on-site for more than 90 days without a permit or without having interim status.

29. The EPA inspection of Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14",

and "15" and the NYSDEC inspection of Respondent's facility have indicated that Respondent has accumulated fifty-five gallon containers and a roll-off container of hazardous waste (Toxicity Characteristic Chromium waste (D007), Toxicity Characteristic Lead waste (D008)) for approximately three years as indicated by manifests submitted by Respondent in response to Complainant's January 29, 1991 Request for Information. Respondent has neither a RCRA permit nor interim status.

30. Respondent's accumulation of hazardous wastes for greater than ninety days, as alleged in paragraph "29", constitutes a violation of 40 C.F.R. § 262.34(a) and 6 NYCRR § 373-1.1(d)(1)(iii) and (iv).

Count 4

31. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

32. Pursuant 40 C.F.R. § 265.173 (incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(d)(1), a hazardous waste generator is required to keep closed all containers of hazardous waste except when it is necessary to add or remove waste.

33. The EPA inspection of Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14", and "15" and the NYSDEC inspection on October 3, 1989, revealed that the Respondent failed to close containers of D002, D007 and D008 hazardous waste. At the time of the inspection, at least seventy-five (75) containers of hazardous waste were not closed during storage.

34. Respondent's failure to properly close all drums of hazardous waste during storage as alleged in paragraph "33" constitutes a violation of 40 C.F.R. § 265.173 (as incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(d)(1).

Count 5

35. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

36. Pursuant 40 C.F.R. § 265.171 (incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(b), a hazardous waste generator is required to transfer all hazardous waste in containers that are leaking to containers that are in good condition.

37. The EPA inspection of the Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14", and "15" revealed that the Respondent failed to transfer hazardous waste from leaking containers to containers in good condition. At the time of the inspections, at least four containers of hazardous waste were observed to be leaking.

38. Respondent's failure to transfer hazardous waste from leaking containers to containers in good condition during storage as alleged in paragraph "37" constitutes a violation of 40 C.F.R. § 265.171 (as incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(b).

Count 6

39. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

40. Pursuant to 40 C.F.R. § 265.173(b) (as incorporated by reference in 40 C.F.R. 262.34(a)(1)) and 6 NYCRR § 373-3.9(d)(2), a container of hazardous waste must not be opened, handled or stored in a manner which may rupture the container or cause it to leak.

41. The EPA inspection of the Respondent's facility and follow-up inspections as indicated in paragraphs "13", "14", and "15" revealed that the Respondent stored corrosive hazardous waste (D002) and TCLP wastes (D007, D008) in containers which were stacked as many as five high with no pallets in between layers of stacked containers. The weight of the overlying containers is such that it could cause the bottom containers to rupture or crack causing them to leak.

42. Respondent's failure to store hazardous waste containers in a manner which would prevent rupture or leaking as alleged in paragraph "41" constitutes a violation of 40 C.F.R. § 265.173(b) (as incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(d)(2).

Count 7

43. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

44. Pursuant to 40 C.F.R. § 265.35 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(f), a generator is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to all areas of facility operations.

45. The EPA inspection and follow-up inspections as indicated in paragraphs "13", "14", and "15" and the NYSDEC inspection of the facility revealed that containers of hazardous waste stored at the facility were stored abutted, against a wall, and stacked in some places five high, with no aisle space between drums in an arrangement that prevented the inspection of internal drums and drums in the middle and top of the stack.

46. Respondent's failure to provide adequate aisle space as alleged in paragraph "45" constitutes a violation of 40 C.F.R. § 265.35 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(f).

COUNT 8

47. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

48. Pursuant to 40 C.F.R. § 265.174 (as incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR 373-3.9(e), a generator is required to inspect areas where hazardous wastes are stored on at least a weekly basis looking for leaks and deterioration caused by corrosion and other factors.

49. Although Respondent's March 22, 1991 response to EPA's Request for Information indicates that visual inspections are conducted "on a regular basis" and further states that "no inspection logs were maintained" at the facility, the EPA inspection of the facility determined that areas where containers of hazardous wastes were stored were not properly inspected in accordance with the requirements of 40 C.F.R. § 265.174 on a weekly basis.

50. Respondent's failure to inspect the containers of hazardous waste on at least a weekly basis as alleged in paragraph "49" constitutes a violation of 40 C.F.R. § 265.174 (as incorporated by reference in 40 C.F.R. § 262.34(a)(1)) and 6 NYCRR § 373-3.9(e).

COUNT 9

51. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

52. Pursuant to 40 C.F.R. § 265.16 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.2(g), a Generator's facility personnel must complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures compliance with the requirements of 40 C.F.R. Part 265 and the owner/operator is required to maintain the following documents and records at the facility for each position at the facility related to hazardous waste management: the job title, the name of each employee filling each job, a written job description, a written description of the type and amount of training that will be given to each person, and records that document training or job experience for each position in accordance with 40 C.F.R. § 265.16 and 6 NYCRR § 373-3.2(g).

53. The EPA inspection and the NYSDEC inspection of Respondent's facility indicated that Respondent has failed to provide a hazardous waste training program for employees involved in the handling or management of hazardous waste and has failed to maintain the following documents and records at the facility for each position at the facility related to hazardous waste management: the job title, the name of each employee filling each job, a written job description, a written description of the type and amount of training that will be given to each person, and records that document training or job experience for each position in accordance with 40 C.F.R. § 265.16 and 6 NYCRR § 373-3.2(g).

54. Although Respondent's April 26, 1990 response to NYSDEC's January 24, 1990 Warning Letter stated that Respondent was in compliance with the personnel training regulations and that all training records and certificates of fitness were kept on file at the plant, these records were not made available to the EPA inspector, upon request, during the EPA inspection or during any follow-up inspection.

55. Respondent's failure to provide a hazardous waste training program and to maintain records as alleged in paragraph "54" constitutes a violation of 40 C.F.R. § 265.16 and 6 NYCRR § 373-3.2(g).

COUNT 10

56. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

57. Pursuant to 40 C.F.R. § 265.31 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(b), a generator of hazardous waste is required to operate the facility so as to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous wastes or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

58. The EPA inspection and follow-up inspections as indicated in paragraphs "13", "14", and "15" of Respondent's facility indicated that the facility was not operated so as to minimize threats to human health or the environment due to the following conditions:

- a. There were at least ten drums of hazardous waste leaning against an outside garage door which was buckling.
- b. There were several areas throughout the facility, specifically in process tanks areas and drum storage areas, where hazardous waste spills were present on the ground.
- c. The spills at the facility were located between the tanks and in drum storage areas. These spills were in areas where the floor in the facility is not covered with concrete, asphalt or any type of barrier between the spilled materials and the ground. Analyses of these spills indicate that the spill areas contain concentrations of cadmium in excess of natural background levels.
- d. There were numerous holes in the facility walls and roof allowing precipitation to enter the unclosed containers of hazardous waste and process tanks causing them to overflow.
- e. Analyses of the materials in a tank which was observed to be overflowing during a heavy rainfall during the January 16, 1991 inspection indicated the following contaminant levels based on TCLP and pH analysis:

cadmium = 4.91 ppm

chromium = 59.1 ppm
lead = 2.65 ppm
pH = 1.47

- f. Respondent's use of carbon steel drums to store low pH waste acids increases the likelihood that those containers will leak.

59. Respondent's failure to operate the facility so as to minimize the possibility of any unplanned sudden or non-sudden release of hazardous wastes or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment as alleged in paragraph "58" constitutes a violation of 40 C.F.R. § 265.31 and 6 NYCRR § 373-3.3(b).

Count 11

60. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

61. Pursuant to 40 C.F.R. § 265.32(a) (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(c), a generator of hazardous waste is required to maintain an internal communication or alarm system capable of providing immediate emergency instruction to facility personnel.

62. The EPA inspection and follow-up inspections as indicated in paragraphs "13", "14", and "15" of Respondent's facility indicated that there was not an internal communication system or alarm system which could immediately instruct facility personnel in an emergency situation. Voice communication would not be adequate because the noise of facility operations would prevent a voice signal from being heard during normal operations. Visual signals would also be inadequate as the facility is poorly lit and view would be obstructed by the many large piles of scrap metal throughout the facility.

63. Respondent's failure to maintain an internal communication or alarm system capable of providing immediate emergency instruction to facility personnel as alleged in paragraph "62" constitutes a violation of 40 C.F.R. § 265.32(a) (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(c).

Count 12

64. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

65. Pursuant to 40 C.F.R. § 265.33 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.3(d), a generator of hazardous waste is required to test and maintain fire protection equipment and other equipment as mentioned in 40 C.F.R. § 265.33 to assure their proper operation in time of emergency.

66. The EPA inspection of Respondent's facility indicated that such equipment as listed in paragraph "65" was not maintained or tested to assure proper functioning in the event of an emergency. The portable fire extinguisher in the boiler room was last inspected in November 1989.

67. Respondent's failure to test and maintain fire protection equipment as alleged in paragraph "66" constitutes a violation of 40 C.F.R. § 265.33 and 6 NYCRR § 373-3.3(d).

Count 13

68. Complainant realleges each allegation contained in paragraphs "1" through "18", inclusive, as if fully set forth herein.

69. Pursuant to 40 C.F.R. § 265.51 (as incorporated by reference in 40 C.F.R. § 262.34(a)(4)) and 6 NYCRR § 373-3.4, a generator of hazardous waste must have a contingency plan for its facility. The contingency plan must be designed to minimize hazards to human health or the environment from fire, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

70. In Respondent's April 26, 1990 response to the Warning Letter described in paragraph "7", Respondent submitted a copy of a two page contingency plan for the facility.

71. Complainant's review of Respondent's contingency plan and the EPA inspection of Respondent's facility determined that Respondent had not prepared and implemented an adequate contingency plan for the facility in order to minimize hazards to human health or the environment from fire, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents to air, soil or surface water.

72. Respondent's failure to prepare and implement an adequate contingency plan as alleged in paragraph "71" constitutes a violation of 40 C.F.R. § 265.51 and 6 NYCRR § 373-3.4.

PROPOSED CIVIL PENALTY

In view of the violations referenced above, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith proposes the assessment of a civil penalty for each count described in this complaint in the amount of:

1. For violation of 6 NYCRR § 373-1.1(d)(1)(iii)(c)(3)
[40 C.F.R. § 262.34(a)(3)]..... \$44,850
2. For violation of 6 NYCRR § 373-1.1(d)(1)(iii)(c)(2)
[40 C.F.R. § 262.34(a)(2)]..... \$44,850
3. For violation of 6 NYCRR § 373-1.1(d)(1)(iii)
[40 C.F.R. § 262.34(a)]..... \$827,050
4. For violation of 6 NYCRR § 373-3.9(d)(1)
[40 C.F.R. § 265.173]..... \$44,850
5. For violation of 6 NYCRR § 373-3.9(b)
[40 C.F.R. § 265.171]..... \$44,850
6. For violation of 6 NYCRR § 373-3.9(d)(2)
[40 C.F.R. § 265.173(b)]..... \$31,500
7. For violation of 6 NYCRR § 373-3.3(f)
[40 C.F.R. § 265.35] \$44,850
8. For violation of 6 NYCRR § 373-3.9(e)
[40 C.F.R. § 265.174]..... \$17,500
9. For violation of 6 NYCRR § 373-3.2(g)
[40 C.F.R. § 265.16]..... \$17,500
10. For violation of 6 NYCRR § 373-3.3(b)
[40 C.F.R. § 265.31]..... \$44,850
11. For violation of 6 NYCRR § 373-3.3(c)
[40 C.F.R. § 265.32(a)]..... \$22,500
12. For violation of 6 NYCRR § 373-3.3(d)
[40 C.F.R. § 265.33]..... \$6,500
13. For violation of 6 NYCRR § 373-3.4

[40 C.F.R. § 265.51]..... \$22,500

TOTAL PROPOSED PENALTY..... \$1,214,150

COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith issues the following Compliance Order to Respondent:

1. Respondent shall, within five (5) days of the effective date this Compliance Order, clearly mark, so as to be visible for inspection, on each container of hazardous waste stored on-site the words "Hazardous Waste," so as to comply with Federal and State regulations.
2. Respondent shall, within five (5) days of the effective date of this Compliance Order, clearly mark, so as to be visible for inspection, all containers of hazardous waste stored on-site with the date upon which each period of accumulation began so as to comply with applicable Federal and State regulations.
3. Within sixty (60) days of the effective date of this Compliance Order, Respondent shall properly treat and/or dispose all hazardous wastes stored on-site for more than the permitted time period and shall cease to store hazardous wastes on-site for more than the permitted time period, so as to comply with Federal and State regulations.
4. Respondent shall, within two (2) days of the effective date of this Compliance Order, seal each container of hazardous waste stored on-site, and keep the container closed in the future, except when it is necessary to add or remove wastes.
5. Respondent shall, within two (2) days of the effective date of this Compliance Order, transfer any hazardous waste in leaking containers to containers that are in good condition.
6. Respondent shall, within two (2) days of the effective date of this Compliance Order, manage containers of hazardous waste in a manner which will not cause them to leak or rupture.
7. Respondent shall, within five (5) days of the effective date of this Compliance Order, maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.
8. Respondent shall, starting on or before the effective date of this Compliance Order, perform weekly

inspections of the hazardous waste storage area and maintain logs of such inspections.

9. Respondent shall, within thirty (30) days of the effective date of this Compliance Order, develop and implement a hazardous waste training program for personnel involved in the handling of hazardous waste and shall maintain the following documents and records at the facility for each position at the facility related to hazardous waste management: the job title, the name of each employee filling each job, a written job description, a written description of the type and amount of training that will be given to each person, and records that document training or job experience for each position in accordance with 40 C.F.R. § 265.16 and 6 NYCRR 373-3.2(g).
10. Respondent shall, within thirty (30) days of the effective date of this Compliance Order, submit to EPA for approval and/or modification, a plan to maintain the facility so as to minimize the possibility of fire, explosion, any sudden or non-sudden release of hazardous wastes or hazardous waste constituents to the environment. This plan must, at a minimum, address the situations described in paragraph "58" above. This plan shall be implemented no later than ten (10) days after EPA approves or modifies the submitted plan.
11. Respondent shall, within sixty (60) days of the effective date of this Compliance Order, install an alarm system which will allow immediate communication in the event of an emergency.
12. Respondent shall, on or before the effective date of this Compliance Order, test all fire protection equipment and all equipment listed in 40 C.F.R. § 265.33.
13. Respondent shall, within thirty (30) days of the effective date of this Compliance Order, submit to EPA an adequate contingency plan. The contingency plan must be designed and maintained to minimize hazards to human health or the environment from fire, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
14. Respondent shall, within thirty (30) days of the effective date of this Compliance Order, submit to EPA for review and approval a plan for the identification and remediation of all spills of hazardous wastes and/or hazardous waste constituents that have occurred

at the facility. This plan must, at a minimum, address all releases to the soil identified in paragraph "58" above and all releases to groundwater that are above natural background levels. Within thirty (30) days of receipt of EPA's approval or modification of the submitted plan, Respondent shall implement the plan in accordance with the schedule approved by EPA.

15. Within sixty (60) days of the effective date of this Compliance Order, Respondent shall submit to EPA for review and approval a closure plan that meets all of the requirements of 40 C.F.R. Part 265, Subpart G. Within thirty (30) days of receipt of EPA's approval or modification of the submitted closure plan, Respondent shall implement the closure plan in accordance with the schedule approved by EPA.
16. Within thirty (30) days of the effective date of this Compliance Order, Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of any appropriate supporting documentation) or noncompliance for each of the requirements set forth herein, including copies of all written plans, documents or records required to be prepared pursuant to the above regulations. If the Respondents are in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Notice of noncompliance will in no way excuse the noncompliance.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, a violator failing to take corrective action within the time specified in a Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the Administrator or the State.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, and in accordance with EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 45 Fed. Reg. 24,360 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order, Notice of Opportunity for Hearing), you have the right to request a

Hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of RCRA, should you request such a public Hearing, notice of the Hearing will be provided and the Hearing will be open to the general public. However, in the absence of such a specific request, public notice of a scheduled Hearing will not be published.)

To avoid being found in default and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written Answer to the Complaint, which may include a request for a Hearing. Your Answer, if any, must be addressed to the U.S. Environmental Protection Agency, Regional Hearing Clerk, 26 Federal Plaza, New York, New York 10278, and must be filed within thirty (30) days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing.

Your answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the Hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a Hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Your failure to file a written Answer within thirty (30) days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal Hearing to contest any of the facts alleged by the Complainant. Your default may result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any

settlement agreement reached with you in such a conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for any informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Stuart Keith, Assistant Regional Counsel, Air, Waste & Toxic Substances Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-3583.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for a Hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneously with, the adjudicatory Hearing procedure. However, no penalty reduction will be made simply because such a conference is held.

Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Consent Order to be issued by the Regional Administrator.

Signing of such a Consent Agreement in this matter shall constitute a waiver of the right to request and to obtain a formal Hearing on any matter stipulated to therein. Entering into a settlement through signing of such Consent Agreement and continued compliance with the terms and conditions set forth in both the Consent Agreement and Compliance Order will terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Entering into a settlement and your continuing compliance with the conditions set forth in the Compliance Order do not extinguish, satisfy or otherwise affect your obligation and responsibility to comply with all other applicable regulations and requirements set forth in, and/or promulgated pursuant to, RCRA, and to maintain such compliance.

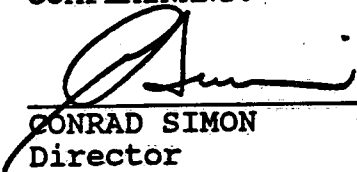
RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, requesting a Hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending a check in the amount of the penalty specified in the "Proposed Civil Penalty" section of this document to the Regional Hearing Clerk, EPA - Region II, P.O. Box 360188M,

Pittsburgh, PA 15251. A copy of the check should be sent to, Stuart Keith, Esq., at the address referenced above. Your check must be made payable to the Treasurer of the United States.

DATE: *Sept 10, 1991*

COMPLAINANT:



CONRAD SIMON
Director
Air & Waste Management Division
Environmental Protection Agency
Region II

TO: John Sweeney, President, Nelson Galvanizing, Inc. and
Nelson Foundry Company, Inc.
11-02 Broadway
Long Island City, New York 11106

cc: John Middelkoop, Director
Bureau of Hazardous Waste Operations, NYSDEC

bcc: John Gorman, 2AWM-HWC
Anne Kelly, 2AWM-HWC
Stuart Keith, 2ORC-AWTS
Laura Livingston, 2OPM-PAB
Bob Small, WH-527
Michael Mintzer, 2ORC
Paul Kahn, ERRD

Certificate of Service

This is to certify that on the 13TH day of September 1991, I served a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice by certified mail to John Sweeney, President, Nelson Galvanizing, Inc., Nelson Foundry Co., Inc. 11-02 Broadway, Long Island City, New York, 11106. I hand carried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Doris Ahearn

COUNT 1**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)(c)(3)
(40 C.F.R. § 262.34(a)(3))
Failure to clearly mark or label
containers with the words "hazardous
waste"

PENALTY AMOUNT FOR COMPLAINT

1.	Gravity based penalty from matrix.....	<u>\$22,500</u>
	(a) Potential for harm.....	<u>Major</u>
	(b) Extent of Deviation.....	<u>Major</u>
2.	Select an amount from the appropriate multi-day matrix cell.....	<u>\$3,000</u>
3.	Multiply line 2 by number of days of violation minus 1(3,000 x 4)	<u>\$12,000</u>
4.	Add line 1 and line 3.....	<u>\$34,500</u>
5.	Percent increase for lack of good faith.....	<u>10%</u>
6.	Percent increase for willfulness/negligence.....	<u>10%</u>
7.	Percent increase for history of noncompliance.....	<u>10%</u>
8.*	Total lines 5 through 7.....	<u>30%</u>
9.	Multiply line 4 by line 8.....	<u>\$10,350</u>
10.	Calculate economic benefit.....	<u>N/A</u>
11.	Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....	<u>\$44,850</u>

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)(c)(3)
 (40 C.F.R. § 262.34(a)(3))
 Failure to clearly mark or label
 containers with the words "hazardous
 waste"

1. Gravity Based Penalty

(a) Potential for Harm MAJOR - The "Potential for Harm" present in this violation was determined to be MAJOR because the violation poses substantial risk of exposure to workers. Containers of D002, D007, and D008 were not labeled and the area of storage was not marked as the "Hazardous Waste Storage Area". This violation has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program since workers could inadvertently remove the unlabelled drums and handle them as non-hazardous waste.

(b) Extent of Deviation MAJOR - The "Extent of Deviation" present in this violation was determined to be MAJOR because none of the requirements of this particular regulation were implemented as intended. None of the containers were labeled and there was no sign posted indicating that the area was used for the storage of hazardous waste.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter to Respondent from NYSDEC dated January 24, 1990 and documented by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was indicated in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter which indicated this violation was issued to the facility by NYSDEC on January 24, 1990 and the violation had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent was cited for this violation in a NYSDEC Warning Letter dated January 24, 1990.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 2**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)(c)(2)
(40 C.F.R. § 262.34(a)(2))
Failure to clearly mark date of
accumulation

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|--|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>\$3,000</u> |
| 3. | Multiply line 2 by number of days of violation minus
1(3,000 x 4) | <u>\$12,000</u> |
| 4. | Add line 1 and line 3..... | <u>\$34,500</u> |
| 5. | Percent increase/decrease for good faith..... | <u>10%</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>10%</u> |
| 7. | Percent increase for history of noncompliance..... | <u>10%</u> |
| 8.* | Total lines 5 through 7..... | <u>30%</u> |
| 9. | Multiply line 4 by line 8..... | <u>\$10,350</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the compliant..... | <u>\$44,850</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)(c)(2)
 (40 C.F.R. § 262.34(a)(2))
 Failure to clearly mark date of
 accumulation

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" present in this violation was determined to be MAJOR; the violation has an adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program, which limits the length of time hazardous wastes may be stored on-site by generators.

(b) Extent of Deviation Major - The "Extent of Deviation" present in the violation was determined to be MAJOR because the facility substantially deviated from the requirements of this regulation. At least 300 containers of hazardous waste in the facility were not marked with the date of accumulation.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation (NYSDEC) inspection dated October 3, 1989, and indicated in a Warning Letter from NYSDEC to the Respondent dated January 24, 1990 and documented by USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was indicated in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter was issued to the facility on January 24, 1990 and had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent was cited for this violation in a NYSDEC Warning Letter dated January 24, 1990.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 3**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)
(40 C.F.R. § 262.34(a))
Accumulation of hazardous waste for
greater than 90 days without interim
status or a permit

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|---|--|------------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>\$3,000</u> |
| 3. | Multiply line 2 by number of days of violation
minus 1.....(179 x 3000) | <u>\$537,000</u> |
| 4. | Add line 1 and line 3..... | <u>\$559,500</u> |
| 5. | Percent increase/decrease for good faith..... | <u>10%</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>10%</u> |
| 7. | Percent increase for history of noncompliance..... | <u>10%</u> |
| 8.* | Total lines 5 through 7..... | <u>30%</u> |
| 9. | Multiply line 4 by line 8..... | <u>\$167,850</u> |
| 10. | Calculate economic benefit..... | <u>\$99,700</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... | <u>\$827,050</u> |
| <p>* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.</p> | | |

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-1.1(d)(1)(iii)
 (40 C.F.R. § 262.34(a))
 Accumulation of hazardous waste for
 greater than 90 days without interim
 status or a permit

1. **Gravity Based Penalty**

(a) Potential for Harm Major - The "Potential for Harm" present in this violation was determined to be MAJOR because violation of this regulation undermines the statutory or regulatory purposes and procedures for implementing the RCRA program.

(b) Extent of Deviation Major - The "Extent of Deviation" present in this violation was determined to be MAJOR because the containers which exceeded the ninety (90) day storage limit were in violation for greater than a year. A roll-off container and 55 gallon containers storing D007, D008 (salt crystals) were stored for greater than one year.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter to Respondent from NYSDEC dated January 24, 1990 and indicated by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15". The Respondent also indicated that in a letter to Complainant dated March 22, 1991 that these materials (salt crystals) have not been removed from the site.

2. **Adjustment Factors**

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was cited in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter was issued to the facility on January 24, 1990 indicating the violation and had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent was cited for this violation in a NYSDEC Warning Letter dated January 24, 1990.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit Since Respondent stored hazardous wastes on-site in excess of the allowable accumulation time, Respondent derived an economic benefit because Respondent avoided the cost of shipping these wastes to a facility that is authorized to properly treat or dispose of them. EPA has determined (through telephone price quotes from commercial facilities that are authorized to handle D008 (lead) hazardous wastes) that Respondent would have been required to pay at least \$99,700 for the transportation and treatment and/or disposal of the approximately 60 tons of hazardous wastes that were illegally stored on-site.

4. Recalculation of Penalty Based on New Information N/A

COUNT 4

PENALTY COMPUTATION WORKSHEET

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.9(d)(1)
(40 C.F.R. § 265.173)
Containers holding hazardous waste must
always be closed except when adding or
removing waste

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|--|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>\$3,000</u> |
| 3. | Multiply line 2 by number of days of violation minus
1 (3000 x 4)..... | <u>\$12,000</u> |
| 4. | Add line 1 and line 3..... | <u>\$34,500</u> |
| 5. | Percent increase/decrease for good faith..... | <u>10%</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>10%</u> |
| 7. | Percent increase for history of noncompliance..... | <u>10%</u> |
| 8.* | Total lines 5 through 7..... | <u>30%</u> |
| 9. | Multiply line 4 by line 8..... | <u>\$10,350</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... | <u>\$44,850</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.9(d)(1)
 (40 C.F.R. § 265.173)
 Containers holding hazardous waste must always be closed except when adding or removing waste

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and the environment. This is compounded by the fact that the hazardous wastes which were stored in open containers were not marked with labels indicating that the contents were hazardous waste.

(b) Extent of Deviation Major - The "Extent of Deviation" present in this violation was determined to be MAJOR because at least thirty (30) containers of hazardous waste were unsealed.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter from NYSDEC to Respondent dated January 24, 1990 and by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was cited in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter was issued to the facility on January 24, 1990 indicating this violation and the violation had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent has a history of noncompliance. A Warning Letter was issued to the facility on January 24, 1990 indicating this violation.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 5**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.9(b)
(40 C.F.R. § 265.171)
Hazardous waste in containers which are
leaking must be transferred to
containers in good condition

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|---|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>\$3,000</u> |
| 3. | Multiply line 2 by number of days of violation minus
1 (3000 x 4)... | <u>\$12,000</u> |
| 4. | Add line 1 and line 3..... | <u>\$34,500</u> |
| 5. | Percent increase/decrease for good faith..... | <u>10%</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>10%</u> |
| 7. | Percent increase for history of noncompliance..... | <u>10%</u> |
| 8.* | Total lines 5 through 7..... | <u>30%</u> |
| 9. | Multiply line 4 by line 8..... | <u>\$10,350</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the compliant..... | <u>\$44,850</u> |
| * | Additional downward adjustments, where substantiated
by reliable information, may be accounted for here. | |

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.9(b)
 (40 C.F.R. § 265.171)
 Hazardous waste in containers which are
 leaking must be transferred to
 containers which are in good condition

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and the environment.

(b) Extent of Deviation Major - The "Extent of Deviation" present in this violation was determined to be MAJOR because at least four (4) containers of hazardous waste stored at the facility were leaking.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter from NYSDEC to Respondent dated January 24, 1990 and documented by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was cited in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter was issued to the facility on January 24, 1990 indicating this violation and this violation had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent has a history of noncompliance. A Warning Letter was issued to the facility on January 24, 1990 indicating this violation.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 6**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.9(d)(2)
(40 C.F.R. § 265.173(b))
A container of hazardous waste must not
be opened, handled or stored in a manner
which would cause it to leak or rupture.

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|---|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>\$3,000</u> |
| 3. | Multiply line 2 by number of days of violation minus
1(3000 x 3)..... | <u>\$9,000</u> |
| 4. | Add line 1 and line 3..... | <u>\$31,500</u> |
| 5. | Percent increase/decrease for good faith..... | <u>N/A</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>N/A</u> |
| 7. | Percent increase for history of noncompliance..... | <u>N/A</u> |
| 8.* | Total lines 5 through 7..... | <u>N/A</u> |
| 9. | Multiply line 4 by line 8..... | <u>N/A</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... | <u>\$31,500</u> |
| * | Additional downward adjustments, where substantiated
by reliable information, may be accounted for here. | |

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.9(d)(2)
(40 C.F.R. § 265.171)
A container of hazardous waste must not be stored in a manner which may rupture it or cause it to leak.

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and the environment.

(b) Extent of Deviation Major - The "Extent of Deviation" present in this violation was determined to be MAJOR because drums of hazardous waste were stored and stacked in some areas as many as five high, with no palettes. This practice could cause the containers on the bottom of the stack to leak or rupture, due to the weight of the overlying drums.

(c) Multiple/Multi-day Multi-day penalties were assessed on the basis of violations indicated during USEPA inspections listed in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith N/A

(b) Willfulness/Negligence N/A

(c) History of Noncompliance N/A

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 7

PENALTY COMPUTATION WORKSHEET

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.3(f)
(40 C.F.R. § 265.35)
Failure to maintain aisle space

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$22,500
 - (a) Potential for harm..... Major
 - (b) Extent of Deviation..... Major
 2. Select an amount from the appropriate multi-day matrix cell..... \$3,000
 3. Multiply line 2 by number of days of violation minus 1 (3,000 x 4) \$12,000
 4. Add line 1 and line 3..... \$34,500
 5. Percent increase/decrease for good faith..... 10%
 6. Percent increase for willfulness/negligence..... 10%
 7. Percent increase for history of noncompliance..... 10%
 - 8.* Total lines 5 through 7..... 30%
 9. Multiply line 4 by line 8..... \$10,350
 10. Calculate economic benefit..... N/A
 11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint..... \$44,850
- * Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.3(f)
(40 C.F.R. § 265.35)
Failure to maintain aisle space

1. Gravity Based Penalty

(a) Potential for Harm Major The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and risk of release to the environment. A release from an interior container would not be detected since drums are stored abutted to each other and stacked against the wall of the boiler room.

(b) Extent of Deviation MAJOR - The "Extent of Deviation" present in this violation was determined to be MAJOR due to the large number of drums which were present at the facility which were inaccessible.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter from NYSDEC to Respondent dated January 24, 1990 and documented by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was indicated in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter was issued to the facility on January 24, 1990 indicating this violation and this violation had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent has a history of noncompliance. A Warning Letter was issued to the facility on January 24, 1990 indicating this violation.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 8**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.9(e)
(40 C.F.R. § 265.174(a))
Failure to perform inspections of the
storage areas on a weekly basis.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$ 17,500
 - (a) Potential for harm..... Major
 - (b) Extent of Deviation..... Moderate
2. Select an amount from the appropriate multi-day
matrix cell..... N/A
3. Multiply line 2 by number of days of violation minus
1 N/A
4. Add line 1 and line 3..... N/A
5. Percent increase/decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance..... N/A
- 8.* Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... \$17,500

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.9(e)
(40 C.F.R. § 265.174(a))
Failure to perform inspections of the
storage areas on a weekly basis.

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and risk of release to the environment. A release from a container would not be detected since drums are not inspected on a weekly basis. The potential for harm from this violation is compounded by the fact that drums were also not sealed and in some instances leaking or stored in potentially incompatible containers.

(b) Extent of Deviation Moderate - The "Extent of Deviation" present in this violation was determined to be MODERATE since inadequate inspections, if any, were conducted of the relatively large volume of hazardous waste stored at the facility.

(c) Multiple/Multi-day Multi-day penalties were not assessed since the violation could not be documented except for the date of the EPA inspection.

2. Adjustment Factors

- (a) Good Faith N/A
- (b) Willfulness/Negligence N/A
- (c) History of Noncompliance N/A
- (d) Ability to Pay N/A
- (e) Environmental Project N/A
- (f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 9**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 372.2(g)
(40 C.F.R. § 265.16)
Failure to provide a hazardous waste
training program for employees.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$ 17,500
 - (a) Potential for harm..... Major
 - (b) Extent of Deviation..... Moderate
2. Select an amount from the appropriate multi-day
matrix cell..... N/A
3. Multiply line 2 by number of days of violation minus
1 N/A
4. Add line 1 and line 3..... N/A
5. Percent increase/decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance..... N/A
- 8.* Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... \$17,500

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.2(g)
(40 C.F.R. § 265.16)
Failure to provide a training program.

1. Gravity Based Penalty

(a) Potential for Harm MAJOR - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and to the environment.

(b) Extent of Deviation MODERATE - The "Extent of Deviation" of from the regulation was determined to be MODERATE due to the fact that two employees in supervisory positions have been trained by the New York City Fire Department.

(c) Multiple/Multi-day Multi-day penalties were not assessed because violation of this regulation is a one time occurrence.

2. Adjustment Factors

(a) Good Faith N/A

(b) Willfulness/Negligence N/A

(c) History of Noncompliance N/A

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 10**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.3(b)
(40 C.F.R. § 265.31)
Facility must be maintained to minimize
the possibility of fire, explosion,
unplanned or sudden release.

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$22,500
 - (a) Potential for harm..... Major
 - (b) Extent of Deviation..... Major
2. Select an amount from the appropriate multi-day
matrix cell..... \$3,000
3. Multiply line 2 by number of days of violation minus
1(3000 x 4). \$12,000
4. Add line 1 and line 3..... \$34,500
5. Percent increase/decrease for good faith..... 10%
6. Percent increase for willfulness/negligence..... 10%
7. Percent increase for history of noncompliance..... 10%
- 8.* Total lines 5 through 7..... 30%
9. Multiply line 4 by line 8..... \$10,350
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... \$44,850

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.3(b)
(40 C.F.R. § 265.31)
Facility must be maintained to minimize
the possibility of fire, explosion,
unplanned or sudden release.

1. Gravity Based Penalty

(a) Potential for Harm MAJOR - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation substantially increases the risk of exposure to workers and to the environment.

(b) Extent of Deviation MAJOR - The "Extent of Deviation" from the regulation was determined to be MAJOR because the Respondent deviated from the regulation to such an extent that many of the requirements of this regulation were not met.

(c) Multiple/Multi-day Multi-day penalties can be assessed because the occurrence of the violation has been documented by a New York State Department of Environmental Conservation inspection dated October 3, 1989, and indicated in a Warning Letter to Respondent from NYSDEC dated January 24, 1990 and documented by the USEPA on the inspections indicated in paragraphs "12", "13", "14", and "15".

2. Adjustment Factors

(a) Good Faith Respondent has shown a lack of good faith as indicated by the fact that this violation was indicated in a New York State Department of Environmental Conservation Warning Letter dated January 24, 1990 and had not been corrected at the time of the EPA inspection.

(b) Willfulness/Negligence Respondent has shown negligence in that a Warning Letter which indicated this violation was issued to the facility by NYSDEC on January 24, 1990 and the violation had not been corrected at the time of the EPA inspection.

(c) History of Noncompliance Respondent was cited for this violation in a NYSDEC Warning Letter dated January 24, 1990.

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 11**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.3(c)
(40 C.F.R. § 265.32(a))
Failure to provide an internal
communication or alarm system.

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|--|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>N/A</u> |
| 3. | Multiply line 2 by number of days of violation minus
1 | <u>N/A</u> |
| 4. | Add line 1 and line 3..... | <u>N/A</u> |
| 5. | Percent increase/decrease for good faith..... | <u>N/A</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>N/A</u> |
| 7. | Percent increase for history of noncompliance..... | <u>N/A</u> |
| 8.* | Total lines 5 through 7..... | <u>N/A</u> |
| 9. | Multiply line 4 by line 8..... | <u>N/A</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... | <u>\$22,500</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.3(c)
(40 C.F.R. § 265.32(a)
Failure to provide internal
communication system or alarm system.

1. Gravity Based Penalty

(a) Potential for Harm Major - The "Potential for Harm" for this violation was determined to be MAJOR because violation of this regulation results in a substantial increase of risk of exposure of workers and the environment to hazardous waste.

(b) Extent of Deviation MAJOR - The "Extent of Deviation" from the regulation was determined to be MAJOR because the Respondent deviates from the regulation to such an extent that none of the requirements for this regulation are met. There is no means of internal communication at the facility. Visual signals would not be sufficient due to the fact that the facility is poorly lit and there are many piles of scrap metal throughout the facility which would obstruct view. Voice communication would also be insufficient due to the loud volume of the facility operations.

(c) Multiple/Multi-day Multi-day penalties were not be assessed because violation of this regulation is a one-time occurrence.

2. Adjustment Factors

(a) Good Faith N/A

(b) Willfulness/Negligence N/A

(c) History of Noncompliance N/A

(d) Ability to Pay N/A

(e) Environmental Project N/A

(f) Other Unique Factors N/A

3. Economic Benefit The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information N/A

COUNT 12**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.3(d)
(40 C.F.R. § 265.33)
Failure to test and maintain fire and
spill control equipment.

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|--|-----------------|
| 1. | Gravity based penalty from matrix..... | <u>\$ 6,500</u> |
| | (a) Potential for harm..... | <u>Moderate</u> |
| | (b) Extent of Deviation..... | <u>Moderate</u> |
| 2. | Select an amount from the appropriate multi-day
matrix cell..... | <u>N/A</u> |
| 3. | Multiply line 2 by number of days of violation minus
1 | <u>N/A</u> |
| 4. | Add line 1 and line 3..... | <u>N/A</u> |
| 5. | Percent increase/decrease for good faith..... | <u>N/A</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>N/A</u> |
| 7. | Percent increase for history of noncompliance..... | <u>N/A</u> |
| 8.* | Total lines 5 through 7..... | <u>N/A</u> |
| 9. | Multiply line 4 by line 8..... | <u>N/A</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount
to be inserted into the complaint..... | <u>\$6,500</u> |

* Additional downward adjustments, where substantiated
by reliable information, may be accounted for here.

NARRATIVE TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.3(d)
(40 C.F.R. § 265.33)
Failure to test and maintain fire
control equipment.

1. Gravity Based Penalty

- a) Potential for Harm The Potential for Harm present in this violation was determined to be MODERATE, due to the fact that there are no ignitable hazardous materials stored at the facility and most of the debris and other materials at the facility are metal.
- b) Extent of Deviation The "Extent of Deviation" present in this violation was determined to be MODERATE since fire control inspection equipment had been inspected in 11/89.
- c) Multiple/Multi-day Multi-day penalties were not assessed for this violation because this requirement is a one time occurrence.

2. Adjustment Factors

- a) Good Faith - N/A
- b) Willfulness/Negligence - N/A
- c) History of Noncompliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information - N/A

COUNT 13**PENALTY COMPUTATION WORKSHEET**

Facility Name: Nelson Galvanizing, Inc.
Nelson Foundry Co., Inc.

Address: 11-02 Broadway
Long Island City, New York 11106

Requirement Violated: 6 NYCRR § 373-3.4
(40 C.F.R. § 265.51)
Failure to have an adequate contingency plan.

PENALTY AMOUNT FOR COMPLAINT

- | | | |
|-----|---|------------------|
| 1. | Gravity based penalty from matrix..... | <u>\$ 22,500</u> |
| | (a) Potential for harm..... | <u>Major</u> |
| | (b) Extent of Deviation..... | <u>Major</u> |
| 2. | Select an amount from the appropriate multi-day matrix cell..... | <u>N/A</u> |
| 3. | Multiply line 2 by number of days of violation minus 1 | <u>N/A</u> |
| 4. | Add line 1 and line 3..... | <u>N/A</u> |
| 5. | Percent increase/decrease for good faith..... | <u>N/A</u> |
| 6. | Percent increase for willfulness/negligence..... | <u>N/A</u> |
| 7. | Percent increase for history of noncompliance..... | <u>N/A</u> |
| 8.* | Total lines 5 through 7..... | <u>N/A</u> |
| 9. | Multiply line 4 by line 8..... | <u>N/A</u> |
| 10. | Calculate economic benefit..... | <u>N/A</u> |
| 11. | Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint..... | <u>\$22,500</u> |

* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

NARRATIVE TO SUPPORT COMPLAINT AMOUNT

Requirement Violated: 6 NYCRR § 373-3.4
(40 C.F.R. § 265.51)
Failure to have an adequate contingency plan.

1. Gravity Based Penalty

- a) Potential for Harm The Potential for Harm present in this violation was determined to be MAJOR, since failure to have an adequate contingency plan at the facility results in a substantial increase of risk of exposure in the event of an unplanned release.
- b) Extent of Deviation The "Extent of Deviation" present in this violation was determined to be MAJOR because an adequate contingency plan has not been designed and maintained at the facility.
- c) Multiple/Multi-day Multi-day penalties were not assessed for this violation because this requirement is a one time occurrence.

2. Adjustment Factors

- a) Good Faith - N/A
- b) Willfulness/Negligence - N/A
- c) History of Noncompliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit derived from this violation was determined to be negligible.

4. Recalculation of Penalty Based on New Information - N/A